IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Crl.Rev.Pet.No. 1144 of 2002()

CRA.49/1997 of SESSIONS COURT, THODUPUZHA
CC.383/1993 of JUDL. MAGI. OF FIRST CLASS-I (FOREST OFFENCES), THODUPUZHA

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REVN. PETITIONER/APPELLANT/ ACCUSED NO.2

RASSAK S/O. SULAIMAN ERAMBATHU,
PAREKAVALA BHAGOM, UDUMBANNOOR VILLAGE,
THODUPUZHA TALUK.

BY ADV. SRI.LLOYD JOSEPH VIVERA
SRI.C.A.CHACKO

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
FOREST RANGE OFFICER, THODUPUZHA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/11/2007, ALONG WITH CRRC NO. 12 OF 2002 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

K.R.UDAYABHANU, J

Crl.R.P.No.1144 of 2002

Dated this the 13th day of November, 2007

O R D E R

The revision petitioner is the accused No.2 who stands convicted for the offence under Section 27(1)(e) (iv) of the Kerala Forest Act and sentenced to undergo simple imprisonment for one year.

2. The prosecution case is that accused Nos.1 and 2 were found carrying a teakwood timber piece from the Reserve Forest and thereby causing a loss of Rs.750/- to the Government.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 3 and Exts. P1 to P3.

4. PWs' 1 and 2 are the then Forest Guard attached to Veloor teak plantation. PW3 is the Section Forester. A1 is absconding. A1 and A2 are brothers. It is the case of the defence that the revision petitioner/A2 that he was made an accused only on account of the tact that he is the brother of A1. PW1 has stated that A1 was involved in another case also, and he is absconding.

5. Counsel for the revision petitioner has stressed the fact that the name of A2 mentioned by PW2 is Sulaiman whereas the name of the revision petitioner is Rassak, S/o.Sulaiman. PW1 has stated that it was Abubeker and his brother Rassak. It has also pointed out that the accused were not arrested at the spot. The explanation is that the arrest was not effected as they were familiar to PWs' 1 and 2. Evidently, the same is not a correct statement, at least by PW2. He has mentioned the name as Sulaiman. The fact that the accused were not arrested and A1 is still absconding are factors that render the suspicious prosecution version. I find that the accused is entitled for benefit of doubt. The conviction and sentence of the revision petitioner is herewith set aside.

The revision petition is allowed.

K.R.UDAYABHANU,
JUDGE

csl